

UNITED STATES DISTRICT COURT

ORIGINAL

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable YVONNE GONZALEZ ROGERS, Judge

IN RE: SOCIAL MEDIA)	Further Case Management/
ADOLESCENT ADDICTION/)	Motions Hearing
PERSONAL INJURY PRODUCTS)	
LIABILITY LITIGATION)	NO. C 22-03047 YGR
)	
)	
ALL ACTIONS)	Pages 1 - 68
)	
_____)	Oakland, California
		Friday, July 12, 2024

REPORTER'S TRANSCRIPT OF PROCEEDINGS

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(Appearances continued next page)

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Friday, July 12, 2024

8:29 a.m.

P R O C E E D I N G S

(Zoom Webinar)

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THE CLERK: Good morning, everyone.

These proceedings are being court-reported by this court. Any other recording of this proceeding, either by video, audio, including screenshots or other recording of the hearing, is strictly prohibited.

Your Honor, now calling the civil matter 22-MD-3014-47-YGR, In Re Social Media Adolescent Addiction Personal Injury Products Liability Litigation.

Parties' appearances will be included in today's sign-in sheets.

Thank you.

THE COURT: Okay. Good morning.

So as is our custom, we will have your appearances on the docket. Just make sure that you identify yourself when you come to the microphone.

What I have on our agenda, and you can let me know if there is more to add, the motion to dismiss the Zuckerberg complaint, the motions with respect to the plaintiff fact sheets and changes, I believe there's six. There were some updates in your case management statement.

1 I don't have any update for you on the inter-circuit
2 assignment, but we are making some progress. So hopefully by
3 the next time, I'll have -- I'll have more of an update or
4 more of a complete update for you.

5 And then the protocol that you referenced.

6 Are there other things that we need to discuss?

7 **MR. WARREN:** Good morning, Your Honor. Previn Warren
8 for the personal injury and school district plaintiffs.

9 Just a point of clarification. When you mentioned the
10 plaintiffs' fact sheet, I believe what you meant -- but I
11 would appreciate your clarification -- was the motion to amend
12 to add YouTube and certain Beasley Allen cases.

13 **THE COURT:** Right.

14 **MR. WARREN:** Okay. Yes. We do have that on the
15 agenda as well.

16 There's nothing else on our list except a brief update
17 that we can provide the Court on count 18 which was addressed
18 at the last hearing. And we can deal with that at the end.

19 **THE COURT:** Okay.

20 **MR. HESTER:** Your Honor, Timothy Hester on behalf of
21 Meta.

22 There is a small housekeeping question on the scheduling
23 for the motion to dismiss on the Florida complaint that we
24 wanted to discuss with the Court at some point. We can do
25 that at the end, too.

1 **THE COURT:** Okay.

2 All right. Let's go ahead and do some of the case
3 management stuff first before we move to the Zuckerberg
4 complaint.

5 Let's start with these plaintiff fact sheets and whether
6 they should be amended.

7 **MR. VAN ZANDT:** Good morning, Your Honor. Joseph
8 Van Zandt for the plaintiffs.

9 **MR. ERCOLE:** Good morning, Your Honor. Brian Ercole
10 for the YouTube and Google defendants.

11 **THE COURT:** Okay. Hold on.

12 So that's E-R-C-O-L-E?

13 **MR. ERCOLE:** That's correct, Your Honor.

14 **THE COURT:** So I put these, at least for purposes of
15 analysis, in two different buckets. One is the bucket of
16 those three that are part of the bellwether trials. And the
17 second are the others, I believe there are three, that are
18 not. I think the arguments are slightly different for each.

19 So I'd like a response from the plaintiff to the
20 defendants' argument that by doing this, not only late, but by
21 doing this, what you have done is impact the balance that we
22 were trying to achieve with these bellwether cases. It seems
23 entirely inappropriate.

24 **MR. VAN ZANDT:** Well, Your Honor, there's certainly
25 no intent to try to impact the balance of the bellwether

1 selection.

2 **THE COURT:** But you do understand that it is
3 impacting it?

4 **MR. VAN ZANDT:** Certainly it -- it may change -- it
5 would change the --

6 **THE COURT:** Right.

7 **MR. VAN ZANDT:** -- the parties that are in certain
8 bellwether cases. But the process that has led to --

9 **THE COURT:** No. It not only changes the parties that
10 were involved, but it changes the balance of the cases that
11 are getting tried to give information about the relative
12 culpability of the defendants, if any.

13 **MR. VAN ZANDT:** Yes, Your Honor. It certainly would
14 change that to an extent.

15 But it's our position that these three plaintiffs that are
16 bellwether plaintiffs are not -- their usage of YouTube cannot
17 be a surprise to YouTube. They were plaintiffs who submitted
18 these forms. YouTube, as a defendant, as a company, they know
19 who uses their platform and how much they use these platforms.

20 This is a very complicated process working with young
21 adult and minor plaintiffs who are suffering from -- from
22 severe mental health issues, working through their history of
23 usage over time.

24 And the more we meet with these clients, the more we
25 learn. And we've honestly been surprised to learn how much

1 YouTube usage is at play that we -- that we otherwise did not
2 previously discover with our clients. It is a process sitting
3 down and investigating this thoroughly with our clients. And
4 so we're adding -- we're adding this in under good faith as we
5 learn additional information.

6 **THE COURT:** I'm not suggesting that it's not good
7 faith. What I am suggesting is that it throws off the balance
8 that we were trying to achieve for bellwethers.

9 Again, you say that this is a complicated process. I had
10 Ms. Hazam up at the podium saying, "Hey, Judge, we can do all
11 of this under expedited conditions." And now what you're
12 saying is that, no, actually you don't have everything you
13 need and you needed more time.

14 **MR. VAN ZANDT:** I'm certainly not undermining
15 anything Ms. Hazam has said regarding the schedule and what
16 can -- what can be done here. As soon as additional
17 information was discovered, we sought to amend the complaints.

18 As -- and so that's -- that's simply all we're trying to
19 do here, is not -- not hurt the balance of the bellwether
20 program, but simply representing our clients and at --
21 amending their complaint once we've discovered new information
22 that they have provided, that defendants have presumably known
23 all along in terms of which plaintiffs used their platforms
24 and how long they've used their platforms.

25 **THE COURT:** Response. Mr. --

1 **MR. ERCOLE:** Your Honor, you hit the nail on the head
2 with --

3 **THE COURT:** I did for three, not for three others,
4 and yet you're still objecting on three of them for which
5 there is no impact on the bellwethers.

6 **MR. ERCOLE:** Your Honor, so if I may, I -- just to
7 correct the record, I think there are four additional cases
8 where we asserted objections. So I'm happy to focuses on
9 the --

10 **THE COURT:** You should focus on those because those
11 are the ones with which you have issues.

12 **MR. ERCOLE:** Sure. So, Your Honor, with respect to
13 two of those additional cases, they -- and that would be the
14 Coppleton case and the Murden case, Your Honor -- in those
15 particular cases, the plaintiff there submitted a YouTube
16 appendix saying no harm from any of the features at issue.

17 So with respect to those particular cases, we've asserted
18 a futility -- those two cases we've asserted a futility
19 argument in that --

20 **THE COURT:** It doesn't persuade. These are young
21 people that the lawyers are meeting with them. You can
22 cross-examine them on it.

23 So denied.

24 **MR. ERCOLE:** Okay.

25 So just for the record, Your Honor, the -- the plaintiffs

1 themselves didn't even, on the futility argument, didn't even
2 respond to that argument in our briefing.

3 And -- and just -- just to make the point, like injury and
4 harm is a requirement for each particular claim in this case
5 and we have an under-oath statement from the plaintiff
6 submitted after discussion with their counsel saying I haven't
7 been harmed by these features --

8 **THE COURT:** That was in the first statement, right?

9 **MR. ERCOLE:** It was in -- no. It was in the most
10 recent one. There's an appendix that they submitted. And
11 that remains the only appendix they've submitted as to
12 YouTube.

13 **THE COURT:** Okay. A response on those two.

14 **MR. VAN ZANDT:** Your Honor, certainly if there's an
15 under-oath statement, I'm sure defendants can and will
16 cross-examine plaintiffs on --

17 **THE COURT:** That's not what he's saying. He's saying
18 that your clients, in the most recent one, in the most recent
19 fact statements have said they are not harmed. So how can you
20 assert a claim if they're not harmed?

21 **MR. VAN ZANDT:** Well, Your Honor, our clients are --

22 **THE COURT:** How can you assert --

23 **MR. VAN ZANDT:** -- providing factual information
24 about the usage of the platform. They are -- they are not
25 experts who can claim -- tie causation as to any particular

1 platform, any particular features. That is something that --
2 that clients may not be able to do.

3 But plaintiffs are alleging YouTube usage -- significant
4 YouTube usage in the amendments that we're seeking to have.
5 And, again, there's probably no one that knows that better
6 than YouTube itself as to which plaintiffs use their platforms
7 and how much they use their platforms.

8 **THE COURT:** They're not under an obligation to go and
9 do your research. They're not.

10 **MR. VAN ZANDT:** Right. And as soon as we have found
11 out this additional information from our clients, we have
12 sought accordingly to amend the fact sheet and to amend the
13 complaint.

14 **THE COURT:** It says -- I'm looking at one of these
15 for Coppleton. "Do you contend that the feature contributed
16 to your injuries?" And they say, "No."

17 So how are you going to put someone on the stand claiming
18 injury when they're saying that there is no injury?

19 **MR. VAN ZANDT:** Your Honor, the plaintiff is not
20 saying there is no injury. The plaintiff --

21 **THE COURT:** "Do you contend that this feature
22 contributed to your injuries?" The answer is "No."

23 **MR. VAN ZANDT:** Right. And what I'm saying is that
24 plaintiffs are not always in the best position to make a
25 causation statement as to which particular design features

1 contributed to their injuries. These are answers by lay
2 witnesses. They're alleging injury. They're alleging YouTube
3 usage. But whether or not each particular --

4 **THE COURT:** -- cannot opine without a foundation.
5 You can't just put an expert on the stand to make generic
6 statements.

7 Every single one of these boxes, you have "No." The
8 person has identified -- has said "No."

9 **MR. VAN ZANDT:** Your Honor, respectfully we don't
10 have "No." Our client has "No." An expert can take the
11 harms, the injuries that the plaintiffs have in medical
12 records, analyze the amount of YouTube usage that they've
13 had -- there's going to be hard data about the extent and the
14 severity of their usage of YouTube -- and draw conclusions as
15 to the harm that that could have caused the plaintiff.

16 Again, the plaintiff is not in the best position always to
17 identify which features may or may not have caused harm to
18 them.

19 And it's a pretty rigid response. It's "yes" or "no."
20 And, again, we leave it up for the plaintiffs to answer these
21 questions the best that they can.

22 And that is -- if that is a concern for YouTube, that's
23 something that can be ferreted out through discovery, but it
24 is -- it would not be -- should not be a basis to deny
25 amendment at this stage of a case, especially for a case

1 that's not in the bellwether pool.

2 **THE COURT:** So with respect to Coppleton, it also
3 says "Average minutes of watching YouTube, zero."

4 **MR. VAN ZANDT:** Again, Your Honor, I am not sure if
5 that is the most updated version of fact sheet.

6 So again --

7 **THE COURT:** Well, that's the one you provided --

8 **MR. VAN ZANDT:** Sure.

9 **THE COURT:** -- to me. So I don't understand how it
10 is -- why it is that Coppleton wants to amend if -- if they
11 haven't -- and assuming that you can pass the -- the first
12 issue on injury, they're not even attempting to allege any use
13 of YouTube or watching videos.

14 **MR. VAN ZANDT:** Right.

15 **THE COURT:** So why are you suing them?

16 **MR. VAN ZANDT:** It is -- it's our understanding that
17 there -- that there is YouTube usage there, and that would be
18 the reason that we would be amending -- I can't answer on the
19 spot exactly why the fact sheet says that and something will
20 have to --

21 **THE COURT:** Maybe you should go back to the desk,
22 figure it out, and we'll talk about it later.

23 **MR. ERCOLE:** Your -- Your Honor --

24 **THE COURT:** In general --

25 **MR. ERCOLE:** I apologize, Your Honor. I didn't mean

1 to cut you off.

2 **THE COURT:** -- I'm not letting you change the
3 bellwethers. That is, you can -- if you have a basis for
4 suing them, then I'm going to allow you to have a separate
5 complaint against them and you join the general pool like
6 everybody else.

7 But that will not be part of the bellwether trial. I will
8 not allow you to upset the balance that we have tried to
9 achieve through this process. So that's one. So the
10 bellwether landscape does not change.

11 With respect to, you know, amendments to the complaints,
12 in general, I'm going to let them amend. I have -- within the
13 last 30 days, I've had another 30 lawsuits, approximately,
14 filed.

15 So the fact that they're filing them now or changing --
16 it -- there is no harm, there is no prejudice, they keep
17 rolling in.

18 Those claims will be in the same position as all of the
19 others, and there is no prejudice to the defendants.

20 Understand?

21 **MR. ERCOLE:** Yes, Your Honor. And with respect to
22 these, just for clarification, Your Honor, we did -- there
23 were 15 or so requests to amend for many, I think there were
24 maybe eight or -- or nine we didn't oppose. These were the
25 ones that we focused on because we thought there was

1 particular prejudice or there was a futility argument.

2 So we did try to be selective, but we certainly understand
3 Your Honor's guidance on this issue.

4 **THE COURT:** Rule 15 is very liberal. And I
5 understand that plaintiffs, especially young people, are very
6 flighty. And the more -- do you have children?

7 **MR. ERCOLE:** I -- I do not. I live in Miami, Your
8 Honor. I have a dog so that does not count but --

9 **THE COURT:** Doesn't count. Do you have any nephews,
10 nieces? Do you know any young people?

11 **MR. ERCOLE:** I do, Your Honor, yes.

12 **THE COURT:** Okay. Then you know that they're not
13 always reliable and it takes time and effort to get to the
14 bottom of things. So at least that's my perspective about
15 young people, having dealt with many.

16 So I'm going to allow -- I have a very liberal view on
17 Rule 15, and I'm going to allow it.

18 But you have a Rule 11 obligation, and I don't understand
19 how you, under Rule 11, how you can be asking to amend things
20 where there is apparently no data to support the claim against
21 the defendants.

22 **MR. VAN ZANDT:** I understand that concern, Your
23 Honor, and appreciate your patience. And I will -- I will go
24 back and get that figured out right now. And if you would
25 like to -- if you're able to circle back to that, I'll be able

1 to provide an answer to you.

2 **THE COURT:** Well, if the two of you need to leave the
3 courtroom and figure it out, then that's fine with me.

4 All right. Let's move to the next issue.

5 Since we're talking about plaintiffs, why don't we go
6 ahead and look at the protocol that you all want to put in
7 place for plaintiffs who are not responding to their lawyers.

8 **MS. McNABB:** Good morning, Your Honor. Kelly McNabb,
9 Lieff Cabraser, for the personal injury plaintiffs.

10 **MR. DRAKE:** Good morning. Geoffrey Drake, King &
11 Spalding, for the TikTok defendants.

12 **THE COURT:** Okay. So Drake and McNabb?

13 **MS. McNABB:** Correct, Your Honor.

14 **MR. DRAKE:** Yes.

15 **THE COURT:** And that's two B's, Raynee.

16 **MS. McNABB:** Correct. M-C- capital N-A-B-B.

17 **THE COURT:** Okay. So the protocol that you've
18 proposed, and this is at Docket 987, pages 6, 7, and 8, in
19 general I -- I think it's fine.

20 I'm assuming that you're not only going to mail the
21 notice, but you'll email the notice as well.

22 **MS. McNABB:** Correct, Your Honor.

23 **THE COURT:** Let me just say to the defendants, I
24 frequently use this rule for pro se plaintiffs who don't
25 prosecute, who file lawsuits, then don't get them served, who

1 don't respond. So got a template order, I give them time to
2 respond, and then I dismiss without prejudice.

3 The likelihood that I would dismiss with prejudice for a
4 failure to prosecute is low to zero.

5 **MR. DRAKE:** Understood, Your Honor.

6 **THE COURT:** So I actually do not want motions.

7 **MR. DRAKE:** Understood.

8 **THE COURT:** Okay? Anything else?

9 **MS. McNABB:** The only outstanding issue, Your Honor,
10 is in the Levin matter. It's case number 22-CV-06263.
11 Counsel filed their motion to withdraw on May 16th. And at
12 the last status conference, we -- you held that in abeyance
13 until we worked out this protocol.

14 **THE COURT:** Right.

15 **MS. McNABB:** So I think at this point, it's at the
16 number two part of the protocol which is the order to show
17 cause.

18 **THE COURT:** Okay. And -- and did -- I don't think
19 you provided me a form.

20 **MS. McNABB:** We did not. So what I would propose is
21 we put this proposed protocol into a stipulated proposed
22 order. And with that, we can include a proposed order to show
23 cause that Your Honor can use in these proceedings.

24 **THE COURT:** That'd be great. Thank you.

25 Okay?

1 **MR. DRAKE:** That sounds good.

2 **THE COURT:** Thank you.

3 **MS. McNABB:** Thank you, Your Honor.

4 **THE COURT:** All right.

5 So, Mr. Hester, you wanted to talk about a Florida issue?

6 **MR. HESTER:** Yes, Your Honor. And I know the Court
7 is very busy so I regret troubling you with this scheduling
8 question. It may be resolved by the Court's decision on the
9 next -- on the September CMC. I wasn't sure what the Court's
10 plan was for that.

11 **THE COURT:** My plan was to give you some more dates.
12 But we're not there yet.

13 **MR. HESTER:** All right. So -- so, Your Honor, we'd
14 be happy to -- to aim for that September CMC if that works for
15 the Court. Or I could also give the Court these other dates
16 that were available, but I know you have a lot going on so....

17 **THE COURT:** Yeah. So what I had planned on as we
18 move into the fall is -- and I'm just bringing up my calendar,
19 hold on a minute -- probably another CMC September 13th.

20 **MR. HESTER:** That would resolve the issue entirely,
21 Your Honor. If we could argue it then, that would work very
22 well for us.

23 **THE COURT:** Why don't you all -- does September 13th
24 work for everybody? It's about a month after our August.

25 **MS. OREM:** Your Honor, Beth Orem for the state AG's.

1 September 13th works for the Florida AG's.

2 **THE COURT:** Okay.

3 And that is O-R-E-M?

4 **MS. OREM:** Yes.

5 **THE COURT:** Okay. So we'll hear argument on that
6 September 13th.

7 **MR. HESTER:** Thank you, Your Honor. I appreciate
8 that very much.

9 **THE COURT:** Sure.

10 **MS. OREM:** Thank you.

11 **THE COURT:** Okay. Apparently I have a pretrial
12 conference in a criminal matter that day, but I can move that
13 pretrial -- we can move that to the afternoon, Mr. Cuenco.

14 **THE CLERK:** Yes, Your Honor.

15 **THE COURT:** And we'll take this one in the morning.
16 The lawyers in the criminal matter are local. That way you
17 can catch your planes.

18 Okay. And then count 18?

19 **MR. PANEK:** Good morning. Gabriel Panek of Lief
20 Cabraser for the personal injury plaintiffs.

21 **MS. LANGNER:** Good morning, Your Honor. Bailey
22 Langner from King & Spalding for the TikTok defendants.

23 **THE COURT:** Okay. Hold on. Langner, L-A-N-G-N-E-R?

24 **MS. LANGNER:** Yes.

25 And apologies, Your Honor. I was not originally scheduled

1 to appear today. We learned from plaintiffs this morning that
2 they would be addressing this issue, and luckily I live very
3 close by and was able to make it here.

4 **THE COURT:** That's fine. Okay.

5 And your name again.

6 **MR. PANEK:** Gabriel Panek, P-A-N-E-K.

7 **THE COURT:** Got it. Thank you.

8 **MR. PANEK:** Thank you, Your Honor.

9 **THE COURT:** Okay. So what's the issue?

10 **MR. PANEK:** Your Honor, at the last case management
11 conference, plaintiffs agreed to review certain states'
12 defendants identified in their motion to dismiss where, under
13 count 18, loss of consortium damages might not be available
14 for filial consortium.

15 We went back and we did that and we have identified
16 24 states plus the District of Columbia that defendants raised
17 where a standalone claim seeking damages for loss of
18 consortium is not viable.

19 Where that leaves us is that plaintiffs would propose to
20 stipulate on the record. We have sent a stipulation to this
21 effect to defendants, who have opposed it thus far, to
22 stipulate on the record that plaintiffs in these
23 25 jurisdictions cannot pursue filial loss of consortium
24 damages.

25 The disconnect, I think, comes from the fact that count 18

1 often is not limited to loss of consortium damages. It also
2 includes requests for medical expenses and loss of services.

3 And we want to ensure that plaintiffs in those states are
4 still able to pursue claims for those damages which defendants
5 have not contended are not viable, while ensuring that the
6 issue at the last status conference is resolved.

7 So we would propose we can stipulate on the record, we
8 could submit a written stipulation, or any other way that
9 Your Honor thinks would be best to resolve that.

10 **THE COURT:** All right. A response.

11 **MS. LANGNER:** Yes. Thank you, Your Honor.

12 With respect to Mr. Panek, they are -- they are proposing
13 a stipulation that doesn't make any sense in light of the
14 legal viability of these claims.

15 So at the June 21st hearing on defendants' nonpriority
16 motion to dismiss, defendants argued that any loss of
17 consortium claims brought in the 25 states and the District of
18 Columbia must be dismissed because those jurisdictions do not
19 recognize standalone loss of consortium claims brought by
20 parents or other more attenuated persons.

21 Plaintiffs pleaded their loss of consortium claim as a
22 separate count in their master complaint. They, at the
23 hearing and in their briefing, did not seriously dispute these
24 points, and as Mr. Panek said, agreed to take a second look at
25 agreeing to dismiss the claims briefed by defendants.

1 We -- we were surprised, Your Honor, when we received
2 their stipulation in which they concede that standalone loss
3 of consortium claims are not permitted in the states briefed
4 by defendants with the exception of Connecticut, and they
5 state that they will not seek loss of consortium damages, but
6 they still seek to maintain their loss of consortium claims to
7 seek other forms of damages.

8 That position does not make any sense. Loss of consortium
9 claims are not permitted in these states regardless of the
10 types of damages sought. A claim which does not exist cannot
11 be the basis for any type of damages.

12 So if the plaintiffs will not dismiss these claims
13 voluntarily, we request that the Court grant defendants'
14 motion to dismiss as to count 18.

15 **THE COURT:** Yeah, I don't understand how you can just
16 think that you can have floating damages unconnected to an
17 actual cause of action. If these states have said you cannot
18 state this cause of action, then you cannot state that cause
19 of action, period.

20 If you want to attach those damages to some other claim
21 that is viable that states have said you can acquire those
22 kinds of damages if successful, then you can do that. You
23 can't have damages that are floating out there unattached to
24 an unviable claim.

25 **MR. PANEK:** What I would say, Your Honor, is that in

1 certain states, and this is sort of just a reality of the
2 pleading, is that count 18 is an attempt to join many states
3 which have different approaches to how a plaintiff -- which
4 may have different approaches to how a plaintiff can recover
5 loss of consortium, medical expenses, and loss of services
6 damages.

7 In some states, plaintiffs do, are able to, or must bring
8 a standalone claim for medical expenses, a parent seeking
9 medical expenses on behalf of their child. The approach
10 varies by state, but in some states that is brought as a
11 standalone claim, it's not a derivative claim, it's a primary
12 claim by the parent to recover the medical expenses they paid
13 on behalf of the child.

14 **THE COURT:** Well, then that's what you have to bring.
15 You can't bring it -- if you have to bring a claim for medical
16 expenses, then that's what you have to do.

17 **MR. PANEK:** What I would -- and this is to respond to
18 one of the points that Ms. Langner raised, which is that
19 our -- again one of the disconnects here is that we believe
20 that defendants are focused excessively on the label of the
21 claim.

22 Now there's a lot of case law that says it's not what the
23 claim is called. And here it is called count 18, loss of
24 consortium and society. But it's not the label that controls.
25 It's what the relief sought is.

1 And the medical expenses, it's a standalone paragraph,
2 paragraph 1090, that doesn't say this is a loss of consortium
3 claim and we are seeking medical expenses to redress that.

4 Indeed we pointed that out on page 19 of our opposition
5 brief. So defendants are wrong that we haven't contested
6 that.

7 But regardless, we want to make sure that our clients are
8 not prejudiced from bringing forms of relief that nobody has
9 said they aren't entitled to.

10 If Your Honor thinks it would be better to amend the
11 master complaint to make that clear, we would be happy to. I
12 don't know if there would be logistical issues that would
13 arise out of that with respect to the PFS. But we're, of
14 course, willing to work those through if that's the path Your
15 Honor would prefer.

16 **THE COURT:** The path I would prefer is the path that
17 is consistent with the law. And the path you're trying to
18 take is not consistent with the law in 24 states plus D.C.

19 **MR. PANEK:** I -- one example I would give, though, is
20 that there's a case out of the New York -- we've cited it to
21 the defendants. It's called the *George* case, it's from the
22 Second Department of the Appellate Division, where there was a
23 standalone loss of consortium claim that sought different
24 types of damages similar to what we are seeking here.

25 And the Appellate Division affirmed the dismissal, quote,

1 of so much of the cause of action as sought damages for the
2 plaintiffs' loss of the children's society. It did not affirm
3 the dismissal with respect to other forms of damages sought.

4 And there are other cases that do that as well where you
5 have one cause of action that is sort of a parental damages --
6 standalone parental damages cause of action. That does not
7 necessarily get thrown out entirely if parts of the relief
8 where, here, medical expenses, loss of services, are viable
9 even if the loss of consortium might not be viable.

10 So that is what we thought was our stipulation was doing
11 exactly what Your Honor has requested. We -- we have
12 attempted to do that in good faith to ensure on the record
13 making clear that we agree plaintiffs in those states cannot
14 pursue loss of consortium damages, but they still may be
15 entitled to bring standalone claims for these other forms of
16 relief that defendants have never contested they cannot seek.

17 **THE COURT:** A response.

18 **MS. LANGNER:** Yes, Your Honor.

19 As you stated, plaintiffs here only bring a loss of
20 consortium claim. They did not bring a standalone claim for
21 medical expenses or I think it was loss of services.

22 **THE COURT:** You're on notice and you have been on
23 notice that they were attempting to seek these kinds of
24 damages.

25 So it -- this -- so now it's a question of form. You

1 can't claim prejudice. You've been on notice since the
2 beginning that they were attempting to seek these kinds of
3 damages.

4 So respond to the issue of form.

5 **MS. LANGNER:** Yes, Your Honor.

6 What we're asking here or -- is for the dismissal of the
7 loss of consortium claim. In their briefs, plaintiffs state
8 that they can seek these sorts of damages tied to, for
9 example, wrongful death claims.

10 Whether or not that is true, I'm not here to dispute that
11 today, but we are seeking to dismiss the loss of consortium
12 claims, which, as discussed, are not legally viable in the --
13 the 25 states plus the District of Columbia.

14 **THE COURT:** Well, I don't know. Is -- wrongful death
15 assumes a death, right?

16 **MS. LANGNER:** Correct.

17 **THE COURT:** So I didn't understand these expenses to
18 just be related to death. Or maybe are they only related to
19 death?

20 **MR. PANEK:** They are not, Your Honor.

21 **THE COURT:** So what -- I mean, you've got 17 other
22 causes of action.

23 **MR. PANEK:** That's right.

24 **THE COURT:** And none of these damages are allowed
25 under these 17 causes of action?

1 **MR. PANEK:** I -- my impression is that it may be the
2 case in some states and it may not be the case in other
3 states. If that is what it's coming down to for Your Honor,
4 we would request supplemental briefing to go through that on a
5 state-by-state basis to make sure that nobody is unfairly
6 prejudiced here.

7 **THE COURT:** Well --

8 **MR. PANEK:** One -- if -- oh, sorry, Your Honor.

9 **MS. LANGNER:** Your Honor, these issues have been
10 briefed extensively. And the plaintiffs, in their briefing,
11 submit tables -- pull those up -- where they -- where they
12 claim that these types of damages are permitted.

13 And I'm looking at their table. And most -- this is
14 Appendix B at page 31 of the plaintiffs' opposition.

15 And these are -- they list approximately eight or nine
16 states, and they specifically tie these to wrongful death
17 acts. So I -- I don't understand how they say that they can
18 still bring these related to the loss of consortium claim.

19 **THE COURT:** Okay. I don't understand your statement.
20 That's not what he said.

21 **MR. PANEK:** If I may, Your Honor. Indeed this is
22 not -- I think that again we're -- we're getting hung up on
23 the difference between loss of consortium and the remaining
24 damages with -- which we think are viable. And one analogy I
25 would just draw again is to, for instance, a UCL claim which

1 may have this act is unfair, this act was unlawful, and it may
2 be that a court, on a motion to dismiss, agrees that the
3 unlawful act was unlawful but the unfair act was not unfair.

4 But that doesn't mean you throw the whole claim out.
5 You -- you dismiss the parts of the claim seeking relief that
6 are not -- on theories that are not viable but you leave --

7 **THE COURT:** You just conceded --

8 **MR. PANEK:** Um-hmm.

9 **THE COURT:** -- you conceded that 24 states and D.C.
10 do not recognize this cause of action.

11 **MR. PANEK:** Yes, Your Honor.

12 **THE COURT:** So the question is do you and can you tie
13 these expenses that you've alleged to some other claim?

14 **MR. PANEK:** And what I would say to that is I -- I'm
15 not certain as I stand here for every single state --

16 **THE COURT:** And if you're not certain -- well, then
17 you don't get them in those states. That's my point. You
18 don't get them just because you want them. You actually have
19 to tie them to the law in the specific states at issue. And
20 if you cannot get -- if they -- if they don't authorize them,
21 you're not entitled to them.

22 **MR. PANEK:** Right.

23 **THE COURT:** Or your client is not entitled to them.

24 **MR. PANEK:** Sorry. I may have misunderstood Your
25 Honor's question. Loss of consortium damages, no, we agree

1 those are not going to be authorized in those
2 25 jurisdictions.

3 Medical expenses and loss of services in those
4 25 jurisdictions, parental plaintiffs in all of those states
5 are entitled to those.

6 Whether that's as a standalone cause of action, whether
7 it's a form of relief for another -- for the primary tort
8 claim, I cannot say on a state-by-state basis what that is.

9 But I will say that in all -- in all of those states,
10 there is a path for parents to recover medical expenses that
11 they spent to redress tort harms by their minor child,
12 deceased or not deceased.

13 And if, again, we think that this is just a matter of
14 defendants are focused too much on the fact that it says loss
15 of consortium and society underneath count 18. We think that
16 if you struck the portions of paragraph 1091 that allege
17 damages for loss of consortium, with respect to those
18 25 states, the rest of the count would still be viable in all
19 of those states.

20 **THE COURT:** Again, I don't know that that is true.

21 Remember, counts have elements.

22 **MR. PANEK:** Yes.

23 **THE COURT:** And I said to you at the outset I had
24 issues about that claim because I looked at the elements in
25 California for that claim and they didn't seem to have any

1 bearing on this situation whatsoever.

2 **MR. PANEK:** Yes, Your Honor.

3 **THE COURT:** So do you have the elements for each of
4 those states?

5 **MR. PANEK:** For loss of consortium, no. But for
6 medical expenses and loss of services, yes.

7 **THE COURT:** Okay. But that's not what you've
8 alleged.

9 **MR. PANEK:** And that's why we are trying to -- we
10 have said that we will stipulate out damages under a loss of
11 consortium theory in those 25 jurisdictions.

12 **THE COURT:** All right. This is what you need to do.

13 **MR. PANEK:** Yes, Your Honor.

14 **THE COURT:** You need to go back and -- I am willing
15 to look at your stipulation, but it must be state by state and
16 it must identify the claim upon which you believe you're
17 entitled to those. And if it is something -- you know, let's
18 say the state calls it loss of consortium and injury to
19 family. Then let me know what the claim is actually labeled
20 in that state.

21 **MR. PANEK:** Um-hmm.

22 **THE COURT:** And I want to have the elements. And I
23 don't want you to pull them out of the hat. I want to know
24 what your authority is for them.

25 **MR. PANEK:** Yes. And I will say with respect to

1 those 25 states, and -- and we will certainly file a
2 stipulation with -- with that level of detail for Your Honor,
3 we would not be claiming the elements of loss of consortium
4 for any of those states. It would only be making sure that
5 plaintiffs in those states can still pursue medical expenses
6 and loss of services.

7 **THE COURT:** They cannot pursue it without a claim.
8 Do you understand what I'm saying?

9 **MR. PANEK:** Yes, Your Honor. We will set out what
10 the basis is for the standalone claim for medical expenses and
11 loss of services in those states.

12 **THE COURT:** And what it sounds like is you're asking
13 to substitute a claim or you're seeking to have that dismissed
14 in -- and replaced with something similar.

15 **MR. PANEK:** Well, we think count 18 by itself does
16 stand on its own, but we are willing to amend to make it clear
17 to break those out to make it crystal clear this is a claim
18 for medical expenses, this is a claim for loss of consortium.

19 **THE COURT:** Again, it's not clear to me that you can
20 do what you're saying that you can do. But I will wait and
21 see until I have stuff that's something more specific.

22 It seems inconsistent to me that you can stand there and
23 say that you have -- that you stipulate that these 24 states
24 and D.C. do not allow for this kind of claim, but, yes, they
25 do allow for the kind of claim that you want to -- it makes no

1 sense. You need to be more specific.

2 **MR. PANEK:** Yes, Your Honor.

3 **THE COURT:** What you're saying is inconsistent.

4 **MR. PANEK:** Yes. What we are focusing on the damages
5 that are being sought rather than the primary cause of action
6 and so --

7 **THE COURT:** You cannot get damages without a cause of
8 action.

9 **MR. PANEK:** Yes, of course.

10 And we can make it clear in the stipulation the basis for
11 the cause of action in those 25 jurisdictions with respect to
12 medical expenses and loss of services.

13 **THE COURT:** Give me the docket number again of the
14 appendix.

15 **MS. LANGNER:** It is Docket 597, Appendix B is the one
16 I was referencing.

17 (Pause in the proceedings.)

18 **THE COURT:** Okay. So we'll take -- looking at that
19 appendix, in Maryland, you've already indicated that you have
20 authority for the proposition that damages -- and this
21 appendix says: These are the states in which a parent cannot
22 sustain independent claims for loss of consortium although
23 they can recover damages for loss of companionship and
24 society.

25 With respect to Maryland, the cause of action at issue

1 that provides that is the wrongful death statute. Correct?

2 MR. PANEK: In -- in the appendix, yes.

3 THE COURT: Okay. The appendix cites the law.

4 MR. PANEK: Yes, that's right.

5 THE COURT: And so the claim is wrongful death.

6 MR. PANEK: Right.

7 THE COURT: And you have that claim.

8 MR. PANEK: Yes.

9 THE COURT: So with respect to -- you've already
10 asserted that claim.

11 MR. PANEK: Yes.

12 THE COURT: That's -- that's 16.

13 MR. PANEK: Right.

14 THE COURT: So there's no need for claim 18.

15 MR. PANEK: There is a need for claim 18 to the
16 extent in paragraph 1090 it seeks medical expenses and in one
17 part of paragraph 1091 it's --

18 THE COURT: So why would, at 1090, why wouldn't the
19 stipulation be that paragraph 1090 relates also to cause of
20 action 16?

21 MR. PANEK: In some states there must be a standalone
22 claim for medical expenses. In some states --

23 THE COURT: Is it in Maryland or not?

24 MR. PANEK: As I stand here, I cannot say for sure.
25 However, I would say if you turn the page to the next page of

1 the appendix, to the bottom of 32 and to the top of 33, that
2 is a decision from the Maryland Court of Appeals stating that
3 plaintiffs in personal injury claims do have valid claims for
4 loss of services and necessary expenses.

5 **THE COURT:** Personal injury claims.

6 So, first of all, that's not what the appendix says. But
7 second of all, your personal injury claims are not necessarily
8 loss of consortium. You've got 17 other claims.

9 **MR. PANEK:** That's right, but we want to preserve the
10 right to bring a standalone claim seeking medical expenses and
11 loss of services.

12 In many states, the common law doctrine says a plaintiff,
13 when there is a personal injury, two causes of action arise,
14 one for the child seeking damages to the child, and another
15 from the parents seeking medical expenses and loss of
16 services. We are trying to preserve the second half of that.

17 I understand that count 18 is captioned loss of consortium
18 and society, and that may have been inapt drafting to try to
19 bring everything in under one capacious heading.

20 But in those states, and which is many, many states, that
21 is a viable standalone claim that should not be affected by
22 whether or not there is a loss of consortium claim, which is a
23 different theory of recovery and a different theory of
24 liability.

25 **MS. LANGNER:** Your Honor, there's --

1 **THE COURT:** But that is the theory that you alleged.

2 **MR. PANEK:** That is --

3 **THE COURT:** That is the theory that you alleged. I
4 only have the complaint for purposes of jury instructions and
5 elements of claims. And if you're thinking something else,
6 you didn't properly allege it.

7 **MR. PANEK:** And we are willing to amend to more
8 proper -- to more clearly allege it. Because -- and again --

9 **THE COURT:** You're going to have to do it on a
10 state-by-state basis because I can tell you that if Maryland
11 says that you can get this under -- under a wrongful death
12 claim and you already have a wrongful death claim, the motion
13 is granted as to Maryland.

14 **MR. PANEK:** I --

15 **THE COURT:** And I will do this on a state-by-state
16 basis.

17 **MR. PANEK:** I think that our preferred and our
18 proposed approach would be that with respect to Maryland, as
19 an example, the paragraph of -- in count 18 seeking damages
20 for loss of consortium, we agree that should not be viable as
21 to Maryland.

22 If any plaintiff has that under another cause of action,
23 wrongful death, for instance, that would be part of the
24 wrongful death cause of action. No need to pursue it in
25 count 18.

1 But count 18 does include other claims for relief. It
2 includes medical expenses and loss of services, and we don't
3 want those, which are completely disconnected from loss of
4 consortium, to fall out just because they are under the same
5 heading when it is not the name of the heading that controls.

6 **THE COURT:** Well, I need to know what controls for
7 25 states and D.C.

8 **MR. PANEK:** Yes, Your Honor.

9 **THE COURT:** Two weeks.

10 **MR. PANEK:** Yes, Your Honor.

11 **THE COURT:** Talk about it next month.

12 **MS. LANGNER:** Thank you, Your Honor.

13 **THE COURT:** Thank you.

14 **MR. PANEK:** Thank you.

15 **THE COURT:** Okay. Now, is it -- is all that's left
16 the complaint against Zuckerberg?

17 **MR. WARREN:** Your Honor, substantively I believe
18 that's right.

19 We did want to raise one issue in terms of scheduling in
20 terms of putting other case management conferences on the
21 schedule for the balance of the year, if Your Honor desires to
22 do that.

23 I believe Judge Kang has scheduled some of the discovery
24 management conferences, and I can provide those dates if that
25 would be helpful.

1 **THE COURT:** Well, you may change them if they don't
2 fit with my schedule because my schedule controls.

3 **MR. WARREN:** Absolutely.

4 **THE COURT:** All right. What did he give you?

5 **MR. WARREN:** He gave us -- well, holding aside
6 September since Your Honor just scheduled the CMC for that.

7 **THE COURT:** Well, what did he give you?

8 **MR. WARREN:** He gave us September 26th for the DMC,
9 October 17th, November 21st, and December 19th.

10 **THE COURT:** Yeah, none of those work.

11 **MR. WARREN:** Okay. Very well.

12 **THE COURT:** I mean, look. I can do the end of
13 September, but that's going to be significantly longer in
14 between our August and September. So it doesn't matter to me.
15 If you want to wait that long, I can wait that long and do
16 September 27th.

17 **MR. WARREN:** I would defer to, I think, the AGs who
18 would have a --

19 **THE COURT:** Let me tell you, though -- let me give
20 you the rest of my calendar.

21 **MR. WARREN:** Yeah, thank you.

22 **THE COURT:** October is always the most difficult
23 month. So I can do -- yes, the week of the 17th is not -- so
24 I can do either -- I can do the 25th if you want to do the end
25 of September. Then I could do October 25th.

1 **MS. SIMONSEN:** Your Honor, I'm sorry to interrupt.
2 Ashley Simonsen for the Meta defendants.

3 The end of September does not work for us with respect to
4 in particular the argument that Mr. Hester mentioned earlier.

5 **THE COURT:** So the 27th does not work for Mr. Hester?
6 Okay.

7 **MS. SIMONSEN:** That's correct.

8 **THE COURT:** So if we stick with September 13th and --
9 part of the problem is I'm in back-to-back-to-back trials. So
10 I could do -- I know October 9th is possible and I know
11 October 25th.

12 **MR. WARREN:** And I don't think plaintiffs would have
13 a preference, Your Honor. Whatever works best for the Court.

14 **MS. SIMONSEN:** Same for the defendants, Your Honor.

15 **THE COURT:** And then let's look at November. So he's
16 given you November 21st?

17 **MR. WARREN:** Yes, Your Honor.

18 **THE COURT:** So I can do November 22nd.

19 **MR. WARREN:** Terrific. Thank you, your Honor.

20 **THE COURT:** And then in terms of December, let's -- I
21 can either do -- well, 9, 10, or 11. Which would you prefer?
22 Monday, Tuesday, or Wednesday?

23 **MR. WARREN:** Again, I don't think plaintiffs have a
24 strong preference. Tuesday or Wednesday would probably be
25 preferable to Monday but --

1 **MS. SIMONSEN:** Similar for the defendants, Your
2 Honor. Tuesday or Wednesday would likely be preferable.

3 **THE COURT:** Okay. So let's do December 10.

4 **MR. WARREN:** Thank you, Your Honor. And --

5 **THE COURT:** And so back to October. The -- the 9th
6 would be about a month. The 25th would be six weeks. So....

7 On the other hand, November 22nd is a month after.

8 **MS. SIMONSEN:** Yeah.

9 **THE COURT:** So it doesn't matter to me. I think it's
10 a question of how much time you all need, how much of my time
11 you need in terms of what's going on during that period.

12 **MR. WARREN:** I think the 25th would work great for
13 the plaintiffs. That would be fine.

14 Point of clarification. Would the 13th be -- of September
15 be the Florida argument and a CMC?

16 **THE COURT:** Yes.

17 **MR. WARREN:** Okay. Thank you.

18 **MS. SIMONSEN:** The 25th is fine for your -- for the
19 defendants, Your Honor.

20 **THE COURT:** Okay. So those will all be 9:00 a.m.
21 unless I'm in trial in which case it will change to the
22 afternoon.

23 **MR. WARREN:** Very well, Your Honor. Thank you.

24 **THE COURT:** Okay.

25 **THE CLERK:** Sorry, Your Honor. To clarify, the

1 November date is November 22nd?

2 **THE COURT:** Correct.

3 **THE CLERK:** Thank you.

4 **MR. WARREN:** And, Your Honor, we also would just want
5 to add, you know, given that many motions are fully joined and
6 submitted, and I don't know how many more there will be,
7 hopefully not many, it may be possible to pull down some of
8 these if there aren't really any pending issues of great
9 relevance or importance. And we can work with the defendants
10 on that and let the Court know.

11 **THE COURT:** Okay. That's fine.

12 **MR. WARREN:** Great.

13 **THE COURT:** Sometimes just having it on the calendar
14 allows things that bubble up to get resolved, and it also
15 makes sure that you're doing things because you know you're
16 coming in.

17 **MR. WARREN:** Right.

18 **THE COURT:** So, but happy to see you all.

19 **MR. WARREN:** Thank you. We're always happy to see
20 you, too.

21 **THE COURT:** I'm not so sure about that.

22 **MR. WARREN:** Maybe depends on the motion.

23 I will --

24 **THE COURT:** And we are --

25 **MR. WARREN:** I'm sorry.

1 **THE COURT:** We are working through all of these --
2 all of these motions that have been briefed. So you'll get a
3 large omnibus order. I'm doing them in sections. But because
4 I'm in trial all week, I'm primarily working on them on the
5 weekends. So --

6 **MS. SIMONSEN:** Thank you.

7 **THE COURT:** Okay.

8 **MR. WARREN:** Thank you, Your Honor.

9 And I'm informed that Mr. Van Zandt has -- can return to
10 address the issues about the Beasley Allen clients if you
11 would like.

12 **THE COURT:** Okay. That's fine.

13 **MR. WARREN:** Thank you.

14 **THE COURT:** And then we'll move into the argument
15 about the Zuckerberg motion.

16 **MR. WARREN:** Thank you, Your Honor.

17 **MR. VAN ZANDT:** Thank you, your Honor.

18 Again, Joseph Van Zandt for the Beasley Allen plaintiffs.

19 I apologize for the confusion earlier, and I appreciate
20 the Court's patience.

21 So both of the plaintiffs at issue, the plaintiff fact
22 sheet itself does allege YouTube usage. I believe what Your
23 Honor might have been looking at was the YouTube appendix.
24 And the question there about the YouTube usage on the appendix
25 is: How much did you use YouTube when you were not logged in

1 to YouTube? And the answer was zero.

2 And so in the fact sheet itself for both of the plaintiffs
3 at issue, which was Murden and Coppleton, the plaintiffs do
4 allege what we would indicate as significant YouTube usage
5 from a -- from an early age in their fact sheets.

6 So the issue then that the defendants are arguing related
7 to futility is the question on the fact sheet that goes
8 through each individual design feature and asks if the
9 plaintiff used that feature and then asks if the plaintiff is
10 alleging harm from that specific feature.

11 But both of these plaintiffs are alleging YouTube usage
12 and they are alleging injury from their usage of social media,
13 all of their usage of social media from all defendants
14 including YouTube. So they are alleging usage and injury from
15 YouTube.

16 **MR. ERCOLE:** Your Honor, the only document that
17 exists with respect to this issue of injury is one they stated
18 under oath where for each specific feature regarding YouTube
19 at issue, they said we have not been injured.

20 As a result of that representation under oath, they cannot
21 bring claims against YouTube. It would be futile to bring
22 those particular claims.

23 Putting aside the other arguments with respect to undue
24 delay and the fact that this is like two years after filing,
25 I'm just focusing on the futility piece, that is what our

1 argument is on futility where you have someone stating under
2 oath I haven't been injured by the features at issue. And we
3 submitted those appendices. They're the only ones that have
4 been submitted specific to YouTube. They were negotiated.
5 The point was to understand the nature of the injury, if any.
6 And the answer is: No, we haven't been injured.

7 You shouldn't be allowed to amend years into a case where
8 you've stated under oath that you haven't been harmed by the
9 very features that are at issue in this case, Your Honor.

10 **THE COURT:** I'm going to let you respond. But I'm
11 also going to say that it is a bit of a stretch to keep
12 referring to years when, as you well know, even though this
13 has been pending for not quite two years, nothing happened,
14 initially because everybody was wondering whether the entirety
15 of the case was going to get thrown out, myself included.

16 So be careful with your words. It makes you less
17 credible.

18 **MR. ERCOLE:** Understood, Your Honor.

19 **MR. VAN ZANDT:** Your Honor, the YouTube appendix is
20 not the -- does not contain the entire universe of design
21 features of YouTube's and our allegations against YouTube. It
22 is an appendix attached to a plaintiff fact sheet which is
23 used for vetting in case analysis purposes.

24 It does not contain all of the allegations. There's
25 nothing on the appendix related to age verification, parental

1 controls. There are broader claims against YouTube that this
2 plaintiff has and that master complaint has that are not
3 listed on that appendix. At the end of the day, the plaintiff
4 alleges significant YouTube usage and alleges injury from that
5 usage.

6 I would note again this is not a plaintiff in the
7 bellwether category, and so we would respectfully ask that
8 Your Honor place this plaintiff -- these two, Coppleton and
9 Murden, in the category of non-bellwethers and grant the leave
10 to amend.

11 **THE COURT:** Anything else?

12 **MR. VAN ZANDT:** Not from the plaintiffs, Your Honor.

13 **MR. ERCOLE:** From our perspective, no, Your Honor.
14 We've sort of articulated our reasons with respect to undue
15 delay, futility, and prejudice and, you know, understand
16 Your Honor's position.

17 But we do think with respect to these two particular
18 plaintiffs, again we tried to be targeted in the oppositions
19 to motions to amend that we brought, but with respect to these
20 two particular plaintiffs, given these under-oath
21 representations about lack of injury from the YouTube
22 features, we thought this was an argument that is meritorious,
23 Your Honor.

24 **THE COURT:** Well, it just may mean that they have a
25 very weak case with respect to your client, at least as it

1 relates to the allegations at issue here.

2 That is, in fact, the point of the fact sheets, is to
3 identify the specific products. There were numerous
4 allegations that have been thrown out. And if that's what
5 you're relying on, then, you know, I don't know -- I don't
6 know how much value that case has. But that's -- that's
7 something that's not decided on a motion to dismiss.

8 Okay. Let's go to the Zuckerberg issues.

9 (Pause in the proceedings.)

10 **THE COURT:** All right. Appearances, please.

11 **MR. HESTER:** Good morning again, Your Honor. Timothy
12 Hester on behalf of Mark Zuckerberg and the Meta defendants
13 more broadly.

14 **MR. JASINSKI:** Good morning, Mathew Jasinski with
15 Motley Rice on behalf of the individual plaintiffs.

16 **THE COURT:** J-A-S-I-N-S-K-I?

17 **MR. JASINSKI:** Yes, your Honor.

18 **THE COURT:** Okay. All right.

19 Why don't we start with you, Mr. Jasinski, in terms of
20 replying to the defendants' reply brief.

21 **MR. JASINSKI:** Yes, Your Honor.

22 I think the principal issue that the -- that
23 Mr. Zuckerberg relies upon is this notion on misfeasance
24 versus nonfeasance. And he teases that out of the
25 Pennsylvania case law, the Pennsylvania Supreme Court decision

1 in *Wicks*. I don't believe that he cites a case from any other
2 state.

3 But even with respect to Pennsylvania case law, there is a
4 later decision from the intermediate appellate court much more
5 recently, I think in 2018, in *B&R Resources* where the court
6 explains *Wicks* and says that the Supreme Court did not hold
7 that inaction can never be sufficient to support participation
8 theory of liability, rather mere nonfeasance is not
9 sufficient.

10 And the court gave as an example of mere nonfeasance a
11 claim based on the fact that the corporate officer should have
12 known of the wrongful act. So a should-have-known claim is
13 not going to cut it. We don't make a should-have-known claim
14 here.

15 I think that the common thread through the corporate
16 officer participation cases is the knowledge that the officer
17 has. In *Ecodiesel*, for example, that's clear. Again, that
18 was the case involving Mr. Marchionne and the Chrysler defeat
19 device coverup.

20 But the allegations in *Ecodiesel*, which Mr. Zuckerberg
21 points to as being an example of a case in which the corporate
22 participation doctrine was sufficiently alleged, we've looked
23 at that complaint very closely, and they are very general and
24 frankly scant allegations against Mr. Marchionne that rely
25 principally upon his public statements about how Chrysler Fiat

1 intended to try to use diesel in -- to compete in the
2 marketplace; allegations about numerous public statements
3 concerning EcoDiesel engines and their emissions and
4 performance characteristics; and optimistic statements that
5 diesel vehicles would give Fiat an edge on the competition.

6 And then some what I would say frankly are conclusory
7 allegations that Fiat and FCA conspired to install and conceal
8 emission control software with Mr. Marchionne at the helm, and
9 that it did so and that it --

10 (Off-the-record discussion.)

11 **THE COURT:** Yes. In particular, I'm not the only one
12 who's tired, but Ms. Mercado is my reporter in the trial and
13 we go very long days.

14 **MR. JASINSKI:** I understand. I apologize for getting
15 animated about this.

16 In the -- in the -- another allegation that the company
17 made misrepresentations under the direction and control of
18 Fiat and Marchionne, that these are general and pretty
19 conclusory statements.

20 That's not what we have in this case. We've made very
21 particularized allegations about Mr. Zuckerberg, most
22 especially with respect to his knowledge.

23 And in fact when you read counts eight and nine of the
24 underlying complaint, he is a -- he features prominently in
25 that, both with respect to the various misleading statements

1 that he makes, which we think evidence the effort by his
2 company to conceal the defects and the harms posed by his
3 platforms, but also with respect to, for example,
4 Mr. Zuckerberg learning from a very leading scholar in the
5 field about the harms that were posed by his platforms. And
6 that was a conversation he had directly.

7 **THE COURT:** Has the -- has the Chrysler -- what
8 happened in Chrysler? It's a 2018 case. Did that decision by
9 Judge Chen make it up to the Ninth Circuit? Has it been
10 affirmed? What is the procedural posture of that litigation?

11 **MR. JASINSKI:** You know that I should know the answer
12 to that question, Your Honor. My understanding is it settled,
13 and I don't -- I don't -- I certainly don't believe that that
14 decision was reversed. I can't tell the Court whether it was
15 affirmed.

16 **THE COURT:** Mr. Hester, do you know?

17 **MR. HESTER:** I believe it did not go up on appeal,
18 Your Honor.

19 **THE COURT:** Okay.

20 **MR. JASINSKI:** We'd also point to the *Juul* decision
21 as well. I think that the *Juul* allegations with respect to
22 the individual corporate officers, they are more robust than
23 they were in the *Ecodiesel* case, but I think that they are
24 still allegations that support the sufficiency of the claims
25 that we've alleged against Mr. Zuckerberg.

1 In *Juul* you had two founders who designed an addictive
2 youth-oriented product. Here we have the same thing. And we
3 have Mr. Zuckerberg having his -- his -- having both
4 contributed to the design directly of Facebook in the first
5 instance, and then allegations that indicate he played a very
6 prominent, very prominent role in design choices moving
7 forward.

8 There's also an allegation in the *Juul* case that the two
9 founders had expressed an intent to disrupt the tobacco
10 industry while courting its expertise and investment. And
11 here we have Mr. Zuckerberg playing the tobacco playbook by
12 dodging questions from Congress about the addictiveness of its
13 products.

14 We've got allegations in *Juul* concerning testing that we
15 think demonstrate the importance of the knowledge with respect
16 to whether the statements and omissions in that case were
17 misleading.

18 And here again, I think it's very clear that
19 Mr. Zuckerberg had a great deal of knowledge about his
20 products, that he had exercised an outsized level of control
21 over his products, and -- and contributed to the
22 misinformation campaign that we think was undertaken by Meta.

23 And this is not an example of a case in which they were
24 simply relying on the fact that this CEO is in charge. I
25 think that that's clear from our pleadings. This is -- this

1 is not simply, well, he was at the top and so therefore he
2 must be liable. We understand that's not how this works.

3 **THE COURT:** Well, not all CEOs are alike. Isn't
4 that -- we all can agree with that, right?

5 **MR. HESTER:** Yes, Your Honor.

6 **MR. JASINSKI:** Yes, Your Honor.

7 **THE COURT:** I mean we sit in Silicon Valley, don't
8 we? Mr. Musk is different from many other CEOs, and even he
9 would agree with that.

10 So the mere -- I would say the mere title of CEO is not
11 enough.

12 **MR. HESTER:** Agreed.

13 **MR. JASINSKI:** And we agree.

14 **THE COURT:** Go ahead.

15 **MR. JASINSKI:** Okay. I want to focus on the reply,
16 Your Honor. Bear with me a moment.

17 **THE COURT:** Well, why don't you respond, Mr. Hester.

18 **MR. HESTER:** Yes, Your Honor.

19 Maybe just to set the table, I think especially because
20 counsel has put weight on Mr. Zuckerberg's knowledge, I think
21 it's important to go back to emphasize that the Court has
22 already rejected the plaintiffs' claim that Mr. Zuckerberg can
23 be held personally liable for his own alleged admissions and
24 misrepresentations.

25 And the Court specifically rejected liability theories

1 that included, quoting from the Court's order 4/15 of 2024,
2 Docket 753 at 10 to 11, the Court rejected the theory that his
3 exclusive and superior knowledge was a sufficient basis for
4 personal liability.

5 So now we face the question whether he can be held
6 personally liable as a corporate officer participant.

7 **THE COURT:** Let me tell you that when I wrote that,
8 even though it had not been adequately briefed, I knew that
9 this was an issue. Just so that you're aware.

10 **MR. HESTER:** Right. Thank you, Your Honor.

11 And so but let's go back to the -- to the principle in the
12 cases involving corporate officer liability, which is often
13 called a participant liability theory. And it requires some
14 affirmative deliberate conduct to participate in or
15 specifically direct a tort.

16 And there's variations in language of the cases. You
17 know, there's common law standard. But they all capture the
18 same basic point. They use the phrases "directly involved,"
19 "affirmative acts," "direct personal participation,"
20 "actively participated."

21 Misfeasance, not mere nonfeasance is just one formulation
22 of the --

23 **THE COURT:** But you also agree that evidence in any
24 case and in any trial, especially of misconduct, is not always
25 direct evidence, it can be circumstantial evidence. And

1 circumstantial evidence has the same persuasive power as
2 direct evidence. A jury gets to decide that ultimately.

3 **MR. HESTER:** Yes, Your Honor. But there's many cases
4 that have dismissed these participant theories at the pleading
5 stage where there's not sufficient allegations of affirmative
6 conduct or specific direction. And I think that's exactly
7 what we have here.

8 These formulations under the case law which often are
9 decided on motions to dismiss are all reflecting the same
10 basic point that there has to be allegations of some
11 affirmative deliberate conduct, some --

12 **THE COURT:** So what were the affirmative deliberate
13 conduct in *Juul* that made it sufficient?

14 **MR. HESTER:** I think *Juul* is a really good example
15 that illustrates the line I'm trying to draw.

16 The court said there, and this is from 497 F.Supp.3d, and
17 I'm quoting from 670 to -71. The court said the complaint,
18 quote, must specifically allege personal participation rather
19 than mere awareness.

20 **THE COURT:** I'm not asking for statements of law.
21 I'm asking for what facts that were alleged --

22 **MR. HESTER:** Yes.

23 **THE COURT:** -- that made it sufficient. I have the
24 law.

25 **MR. HESTER:** And the court drew a distinction. There

1 were two officers where it said the allegations were
2 sufficient, three others where it said the allegations were
3 not. As to the two where it said the allegations were
4 sufficient, the court quoted the following: They developed
5 the deceptive youth-focused marketing campaign. That's at
6 Page 671.

7 They, quote, personally reviewed images from the deceptive
8 campaign and, quote, provided specific direction and the
9 content of the website that was deceptive. And, quote, they
10 engineered test results consistent with the deceptive
11 messaging.

12 So based on those allegations, the court concluded that
13 there were sufficient bases to conclude at the pleading stage
14 they were, quote, knowing participants in the scheme to
15 defraud.

16 Conversely, there were allegations against three other
17 directors that were dismissed on this participation theory
18 that were not sufficient to plead participation.

19 And there, the court said, and I'm quoting from page 608,
20 allegations that the three other directors, quote, had final
21 say over the deceptive marketing materials were not enough.

22 And the court said the plaintiffs, quote, are simply
23 trying to hold them liable for acts taken in their capacity as
24 corporate directors. And then the court said, quote, New York
25 courts require more than mere awareness or control.

1 So there we have a clear line that the court drew between
2 very specific allegations of active affirmative participation
3 in the misleading deceptive campaign, including developing the
4 very messaging that was deceptive, personally reviewing the
5 images that were deceptive, and then engineering test results.

6 **THE COURT:** Let me get a response on *Juul*. It seems
7 to me that the allegations that are in the complaint here are
8 more consistent with what *Juul* said was insufficient than what
9 *Juul* said was sufficient.

10 **MR. JASINSKI:** I disagree, Your Honor. I mean I
11 think if you look at the directors that the court concluded in
12 *Juul* that did not have sufficient allegations against them
13 under the corporate participation doctrine, they were entirely
14 conclusory allegations that merely stated that they had,
15 quote, control and final say. And we have not merely alleged
16 that Mr. Zuckerberg had control and final say.

17 I think that the -- as I mentioned before, I do think the
18 *Juul* allegations are -- are quite robust, but I don't think
19 that they are the bare minimum. In other words, I think there
20 are examples of other cases that have allegations --

21 **THE COURT:** So you concede, then, that your
22 allegations are not as robust as *Juul*.

23 **MR. JASINSKI:** No, I don't concede that, Your Honor,
24 but they are -- that they are different.

25 So, for example, I've mentioned before the allegation

1 that -- with respect to design. We have allegations with
2 respect to design. So I think we checked that box.

3 The -- the allegation with respect -- with respect to the
4 reengineering of testing, I would agree there's no sort of
5 specific corollary in our case.

6 But I do think that more generally speaking, that
7 reflected a level of involvement in -- in knowing about the
8 fact that the -- the statements and omissions were misleading.
9 And we have very generous allegations with respect to
10 Mr. Zuckerberg's knowledge here.

11 Another allegation in *Juul* pertained specifically to
12 statements made to *New York Times* that selling Juul to youth
13 was antithetical to the company's mission.

14 We have similar types of statements by Mr. Zuckerberg in
15 various settings with respect to protections for
16 under-13-year-olds, the safety of the platform, and these are
17 directly contrary to internal statements about his drive for
18 growth, focusing on teens, and the like.

19 So I -- I do think that we meet the standard with respect
20 to *Juul*. But I also would submit as a matter of law that --
21 that *Juul* is particularly robust in the minefield of cases.

22 **THE COURT:** So then let's move to *Ecodiesel*.

23 Mr. Hester.

24 **MR. HESTER:** Yes, Your Honor.

25 In *Ecodiesel*, again, we have very specific allegations of

1 a knowing participation in a scheme to defraud. And I'm
2 quoting here from page 983 of the decision. It's
3 295 F.Supp.3d at 983.

4 Led by Mr. Marchionne, who was the CEO, the court said,
5 quote, plaintiffs allege that the defendants, including
6 Marchionne, quote, conspired to install and conceal emissions
7 control software in the EcoDiesel engines to illegally
8 circumvent stringent U.S. emissions standard.

9 That's a very specific allegation of direct conspiracy.

10 **THE COURT:** So someone could say that's also
11 conclusory unless you have specific facts as to what -- how it
12 is that they conspired and how it is that they installed.

13 **MR. HESTER:** Well, the specific -- the specific
14 allegations were that this CEO was the one who directed the
15 installation of these deceptive devices. So you have specific
16 direction to install a deceptive device that was meant to
17 trick and circumvent U.S. emissions controls.

18 **THE COURT:** Do you agree that the -- that the
19 allegations were that specific, that the CEO directed the
20 installation? Mr. Jasinski.

21 **MR. JASINSKI:** Well, as a conclusory matter, they
22 were. But I also think -- I think Mr. Hester is focusing on
23 the wrong part of that decision because the -- there was an
24 omission claim, what the court deemed a concealment omission
25 claim that was specific to failing to disclose to consumers

1 the fact that their cars did not actually in real world
2 conditions obtain the types of -- well, a fuel efficiency and
3 limited environmental impact that they thought that they did.

4 Now the reason is because there's this defeat device. But
5 I focus on this because it was not -- the involvement
6 necessarily in -- that the defeat device itself that mattered
7 for purposes of that claim. What mattered was a role in -- in
8 concealing and keeping that defeat device quiet.

9 But I think, Your Honor, generally speaking, when you look
10 through -- and I've read that complaint -- they are very
11 limited specific allegations in terms of Mr. Marchionne.

12 It was, I think, the inference, which we agree would be
13 appropriate to draw from his optimistic statements about
14 diesel and public statements about the performance
15 characteristics of the EcoDiesel engine that, quote, given the
16 role Mr. Marchionne played vis-a-vis diesel engines is a
17 reasonable inference that he was directly involved with and
18 therefore knowledgeable about what was happening with the
19 EcoDiesel engines.

20 And the company's concealment of the defeat devices,
21 concealment of the defeat devices. The court wasn't relying
22 on the defeat devices themselves.

23 **THE COURT:** Okay. So I think we all agree that there
24 is a claim that exists. We all agree as to what the general
25 elements are of such an allegation to hold someone liable

1 under this theory.

2 So it's all just factual analysis, right? Factual
3 analysis in terms of actual allegations and what inferences
4 can be drawn from those allegations.

5 So anything else you want to argue on the specific factual
6 allegations or lack thereof?

7 **MR. HESTER:** Well, Your Honor, yes. I would -- I
8 would say that the allegations in the addendum focus on things
9 like Mr. Zuckerberg's, quote, unique level of control or the
10 opportunity to disclose more information.

11 I would submit that becomes essentially analogous to what
12 could be said about virtually any CEO who's engaged and active
13 in a corporation. They would have the ability to control, to
14 direct employees, to have final say, to have the opportunity
15 to disclose more to the public.

16 That's inherent in a CEO's role. And if that were
17 sufficient, it's going to apply broadly across virtually any
18 CEO of a major company that's actively involved in the
19 business.

20 And that's the reason that the allegations that we see in
21 cases that permit this participation theory to proceed are
22 much more specific than just saying the CEO had control or
23 could have disclosed more if he -- if he -- if he decided to
24 or had the authority to direct his employees to do more.

25 They involve much more specific, clear allegations of some

1 specific direction or active participation. And the addendum
2 doesn't allege that. It really is -- and quoting from
3 paragraph 23 of the addendum: He could have but did not share
4 information. He, quote, had the opportunity to tell
5 plaintiffs about the risk of harm.

6 That's -- that's really inherent in any CEO's role. And I
7 think it cuts way too broadly the way the plaintiffs are
8 suggesting the participation theory should apply.

9 It's much more limited to something specific involving
10 some allegations of affirmative acts or some very specific
11 direction that they haven't come up with here, Your Honor.

12 So I would submit what they're really --

13 **THE COURT:** And what can I infer from Zuckerberg's
14 own statements to Congress and to the public? That is, he
15 specifically stated that the company was focused on making
16 sure Facebook isn't just fun to use, but also good for
17 people's well-being.

18 Can't I infer that he actually had a basis for that
19 statement or that he -- that he investigated that issue and
20 had knowledge of that issue before making that statement?
21 Can't I infer that?

22 **MR. HESTER:** Well, Your Honor, I think -- I think the
23 answer is in a -- in relation to this participation theory,
24 there has to be some allegation that he specifically directed
25 a broader tort, a broader alleged tort by the corporation.

1 This is participation in a tort by the corporation. The
2 Court's already held that he is not personally liable.

3 **THE COURT:** I understand that. You don't have to
4 remind me what I've already done. I know what I've done.

5 The question is in terms of his corporate role. What
6 you're saying is that this guy is totally hands-off. Like --
7 like any other big CEO, he's -- he's hands-off, and so he
8 can't be held liable under this theory because he's a
9 hands-off CEO.

10 And there are many -- I grant you there are many CEOs who
11 are hands-off. It is not clear to me that Zuckerberg is one
12 of them.

13 **MR. HESTER:** No, Your Honor. I would flip it around
14 the other way, Your Honor. I would said that where you have
15 an active engaged CEO, that certainly the CEO's conduct can be
16 attributed to the corporation in relation to a corporation's
17 tortious conduct. That's certainly true.

18 The question here is, is there personal liability that
19 attaches to the CEO for his activity. And the case law that
20 we see involves something much more concrete and specific
21 where it's not simply he had the ability to disclose or he
22 could have known more or could be inferred. It requires some
23 more specific allegation than that.

24 And if we -- if we permit this sort of inference, it
25 collapses the distinction between participant liability and

1 individual liability -- individual personal liability because
2 what in effect the participant liability theory would be
3 entirely overlapping with personal liability, and that's not
4 where the law is.

5 The reason they call it participant liability is there has
6 to be some allegation of active participation in the
7 corporation's broader tort. And there's no --

8 **THE COURT:** Knowing about an issue and refusing to
9 fund engineers isn't sufficient? That is, refusing to fund
10 engineers or programs to address the issue that he's telling
11 the public "no problem." His engineers are telling him
12 actually there is a problem and we need more engineers to fix
13 it, and him saying no, you can't have those resources, that's
14 not enough active participation?

15 **MR. HESTER:** I would say it's not enough in two
16 senses, Your Honor.

17 First of all, every day CEO's make judgments on resource
18 requests. So to draw an inference simply from the denial of a
19 resource request would really cut very broadly in terms of
20 this concept of participation.

21 **THE COURT:** So you're saying that he has to be the
22 engineer sitting there or the -- you know, doing the work?

23 **MR. HESTER:** No. I'm saying there has to be some
24 specific direction of the tort.

25 But the second point I would make, Your Honor, is the

1 allegation here is not around Zuckerberg's decisions on
2 design. The allegations are whether he -- he engaged --
3 participated in an alleged fraud or misrepresentation by Meta.

4 So this is not -- this -- since we're dealing only with
5 counts eight and nine of the complaint, these allegations
6 around resource requests or decisions he made about how the
7 products would be designed, these are not implicated by
8 counts eight and nine. Those are misrepresentation or fraud
9 theories.

10 And as to those theories, there would need to be some
11 allegation of some specific direction to misrepresent or omit
12 information or some allegation that he actively participated
13 in some alleged scheme by Meta to misrepresent. And there's
14 no such allegation here.

15 **THE COURT:** All right. Where's the allegation if it
16 exists?

17 **MR. JASINSKI:** Well, Your Honor, I think that the
18 allegation pertaining to resource requests is a key part of
19 the fraudulent omission claim because that is information that
20 was not being disclosed at the same time that Mr. Zuckerberg
21 and others were making statements touting the focus that the
22 company had on safety.

23 And one thing that I find curious is the argument that
24 Mr. Zuckerberg -- and this is from -- I think Mr. Hester just
25 said it and also from Mr. Zuckerberg's brief -- that there's

1 no allegation he directed anybody to make an omission.

2 He directed himself to make an omission. We have alleged
3 that he had this knowledge and that he was speaking and he was
4 omitting this information. So I don't -- I can't understand
5 the notion that if he had told a spokesperson to do the same
6 thing, he could be held liable, but because he did it himself
7 he can't. I don't -- that doesn't make sense to me.

8 So I think that all of the -- the allegations that we have
9 with respect to Mr. Zuckerberg's role, the culture of
10 concealment he created, the growth-at-all-costs philosophy,
11 the design influence he had, his vetoing internal pleas for
12 help or ignoring internal pleas for help, coupled with the
13 fact that he is speaking and making misleading public
14 statements as part of Meta's effort to conceal, and the fact
15 that he knew the truth -- and knowledge, I think, is again a
16 through line in these cases.

17 The cases that have dismissed these claims often do so
18 because the officer didn't even know what was going on. The
19 *Mozingo* case is a great example of this where there was a
20 cherrypicker, a crane essentially, that was defective, or
21 allegedly so.

22 And the -- the officer or I think former president had
23 authorized one prototype, and that was the full extent of the
24 allegations. There was literally nothing else. And the court
25 said that's not enough. I agree that's not enough.

1 That's not what we have here. We have somebody who is
2 deeply involved in the day-to-day of the very issue underlying
3 counts eight and nine. He has his hands all over it.

4 **THE COURT:** Okay.

5 When I scheduled this hearing, I told you that I had a
6 criminal case back in at 10:00. It's six minutes to 10:00 so
7 you each get three minutes --

8 **MR. HESTER:** All right.

9 **THE COURT:** -- on your own --

10 **MR. HESTER:** Thank you, Your Honor.

11 **THE COURT:** -- without interruption.

12 **MR. HESTER:** Thank you, Your Honor.

13 **THE COURT:** If I can help myself.

14 **MR. HESTER:** Should I go first, Your Honor?

15 **THE COURT:** You should. It's your motion.

16 **MR. HESTER:** Yes.

17 I would say, first of all, to infer participation in a
18 tort by a corporation from denials of resource requests would
19 sweep very broadly against CEOs much beyond Mr. Zuckerberg.

20 Same thing for objectives of growth or success of a
21 corporation. That's not enough to infer participation in a
22 tort.

23 And again, I would point back to the *Juul* case where the
24 court rejected and dismissed under New York law allegations
25 against three directors who had the final say over this

1 alleged deceptive marketing campaign. And the court said that
2 wasn't enough to establish active knowing participation in the
3 deceptive scheme.

4 So simply to say he was -- Mr. Zuckerberg was broadly
5 aware of what was going on in the company, again, that doesn't
6 suffice to establish the participation liability theory.

7 And to take counsel's position and to say Zuckerberg was
8 making the statements himself, therefore he was participating,
9 that totally collapses the distinction between personal
10 liability of corporate officers and this participation
11 liability theory.

12 And that's why the participation liability theory is
13 different. It requires something more because we're talking
14 about the officer participating in a broader tort by the
15 corporation.

16 And so it can't be said that if Mr. Zuckerberg made a
17 statement and he's not personally liable, nonetheless for that
18 same statement he's liable on a participant liability theory,
19 then collapses the doctrines, and there's no case law that
20 supports that. The case law is always talking about
21 participation in an alleged broader tort by the corporation.

22 I hope I've gotten in my three minutes, Your Honor.

23 **THE COURT:** Go ahead.

24 **MR. JASINSKI:** Thank you, Your Honor.

25 The participation in a fraudulent omission case

1 necessarily includes the omission. It can't be that we simply
2 come to the court and say Mr. Zuckerberg didn't say anything,
3 we're done, he should be held liable.

4 But we don't do that. We say that he didn't say anything.
5 We also said that he said some things and they were
6 misleading. And we couple that with very particularized
7 allegations about his knowledge of the harms, direct knowledge
8 of the harms, and his role in contributing to them in part by
9 vetoing these resource requests and the like.

10 This is, I think, the notion that any CEO knows something
11 about his company and therefore can't be held liable for
12 anything about his company doesn't make sense to me.

13 Mr. Zuckerberg knew specific -- specific important
14 material facts that Meta had a duty to tell the public.
15 Mr. Zuckerberg knew that, knew these facts, had the
16 opportunity to disclose them, and participated in the
17 fraudulent and negligent omission by failing to do so.

18 I think that Mr. Hester is reducing the Court's previous
19 order simply to the point that the Court found he had no duty
20 to speak, but the Court's reasoning -- obviously I don't want
21 to describe it for Your Honor because you're well aware of
22 it -- but was focused on whether the duty attached to him
23 personally. We understand it did not, but it did attach to
24 Meta and he participated in Meta's breach of that duty.

25 **THE COURT:** Okay. Anything else?

1 **MR. JASINSKI:** Not for the plaintiffs, Your Honor.

2 **THE COURT:** Submitted.

3 **MR. JASINSKI:** Thank you.

4 **MR. HESTER:** Thank you, Your Honor.

5 **THE COURT:** All right. Then I will see you all in
6 August. Stay cool. It's hot out there.

7 We're adjourned. Thank you.

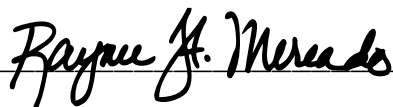
8 **THE CLERK:** Court is adjourned. Thank you.

9 (Proceedings were concluded at 9:58 A.M.)

10 --o0o--

11
12
13 **CERTIFICATE OF REPORTER**

14
15 I certify that the foregoing is a correct transcript
16 from the record of proceedings in the above-entitled matter.
17 I further certify that I am neither counsel for, related to,
18 nor employed by any of the parties to the action in which this
19 hearing was taken, and further that I am not financially nor
20 otherwise interested in the outcome of the action.

21
22 

23 Raynee H. Mercado, CSR, RMR, CRR, FCRR, CCRR

24 Wednesday, July 17, 2024